



## Catskill Watershed Corporation

669 County Hwy 38 • Suite 1 • Arkville, NY 12406

Tel: (845) 586 -1400

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Website: [www.cwconline.org](http://www.cwconline.org)

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Dear Commissioner Bassett:

As local partner on New York City Watershed Protection and Partnership Programs, the Catskill Watershed Corporation (CWC) offers these comments in response to the draft revisions to the 2017 Filtration Avoidance Determination. These comments are submitted on behalf of the CWC Board of Directors who approved them at their special meeting on May 23, 2022.

As you may be aware, CWC is a not for profit local development corporation formed by thirty-nine towns in the New York City West of Hudson Watershed. CWC has two primary purposes – the first is to relieve and reduce adult unemployment in the West of Hudson Watershed; the second purpose is to administer the various watershed protection and partnership programs. At present, these programs are not only conditions of the 2017 FAD, but also requirements of the 2010 Water Supply Permit, issued by New York State Department of Environmental Conservation (NYSDEC).

CWC has a number of comments and concerns regarding the draft revisions to the 2017 FAD. While some of these comments are specific and geared towards individual comments and sections, much of what CWC offers in comments can be broken down into two larger more general areas of focus. These concerns are contracting issues with the City of New York and FAD Enforcement to ensure City compliance.

### **FAD CONTRACTING AND ADMINISTRATION**

Over the last five years, CWC administration of these partnership programs has become increasingly challenging. The implementation of the programs, from Flood Hazard Mitigation, to Stormwater, to the Septic Programs, has been hindered by funding delays, funding level restrictions, micro-management and ever-evolving reporting mandates. These new processes and reporting “mandates” are not justified by prior practice or described in any detail in our agreements with NYCDEP. Rather, the City of New York justifies these new requirements solely upon claims that these requirements are part of “City policy” or point to contract language stating such reporting must be in “a form acceptable to DEP.” There are numerous examples of NYCDEP delaying payment processing, reducing payment amounts, and delays in contract renewals and amendments. These actions negatively affect program administration in a number of ways and have ultimately resulted in the shutdown of multiple programs during this FAD term.

From these and other proposed changes in our FAD funding agreements, it’s clear to CWC that the programs are no longer viewed by either NYCDEP or NYSDOH as a partnership, but instead that CWC is simply subcontractor to NYCDEP. To be abundantly clear, CWC cannot and will



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not sign agreements that do not have any predictability for what our requirements will be to receive FAD mandated funding to continue FAD mandated programs or that fail to recognize our equality as a local partner for these FAD programs.

These issues are not new, and have come up in each of the FAD discussions since at least 2007. While those prior discussions may have temporarily alleviated individual concerns, a new round of proposed FAD funding agreements also brings a new round of contract revisions and challenges that CWC is attempting to address. In an effort to assist and streamline these new procedures and requirements, CWC has attempted to incorporate specific reporting requirements in renewal contracts. The City has to date been resistant to such requests.

To be clear, CWC is not opposed to reporting the use of funds or program data. As part of the 1997 Watershed MOA, the local municipalities insisted that CWC be required to comply with open meetings law and freedom of information law. CWC also reported various data points from our Septic Program to all Watershed Partners in requesting assistance to ensure uninterrupted MOA Septic Program. What CWC does object to is FAD mandated funding being conditioned upon unknown and inconsistent reporting requirements – that are neither mentioned in the FAD nor described in any particularity in the FAD funding agreements between CWC and DEP. Additionally, CWC takes pride and has proven our effectiveness to carry out programs quickly and efficiently over the past 25 years. It is unfortunate NYCDEP has taken the position to step in to micro-manage and inhibit CWC's independence and flexibility to manage our programs that we have successfully and without incident administered for two and a half decades.

### **FAD ENFORCEMENT**

Lastly, the CWC Board is very concerned about the lack of enforcement when NYCDEP violates the FAD, most often related to funding or missing FAD deadlines. CWC recommends a review and evaluation of the current model of FAD primacy and enforcement. CWC believes that inside the West of Hudson Watershed, NYSDEC should be provided primacy for FAD enforcement for the Watershed Protection and Partnership Programs, and that NYSDOH remain primacy agency for FAD water quality requirements through testing and reporting. This dual agency enforcement structure has the potential to provide meaningful oversight and enforcement of the FAD in order to achieve the dual goals to the 1997 MOA that many in the Watershed feel is becoming increasingly one-sided.

Comments included will provide a number of examples of CWC's failed attempts and requests to have FAD regulators come to our assistance when clear FAD violations had occurred. In addition to the dual agency enforcement structure, CWC also recommends a scaled violation system to allow for less serious violations to be issued. It is CWC's belief that having a metric based violation system may provide FAD Regulators a bit more discretion and willingness to issue violations. As long as the Watershed Regulations continue to be in full effect and the City



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continues the ability to purchase land in the Watershed, then the Watershed Protection Programs should continue to be operational and fully funded to ensure the principles of the partnership and dual stated benefits of the MOA are being followed.

In closing, the City of New York has been provided a waiver from the requirement that it construct a \$20 billion plus filtration plant to treat water from the West of Hudson Watershed. Both under EPA and now NYSDOH, that waiver in the form of a FAD is conditioned upon funding of Watershed Protection and Partnership Programs with West of Hudson Partners. These programs are not "City" programs, but rather are mandated as a result of the 1997 Watershed Memorandum of Agreement to not only maintain water quality but also protect West of Hudson community vitality.

CWC and other local watershed partners are not ordinary subcontractors to the City of New York that were awarded contracts after responding to a request for proposal. CWC and other local watershed partners are equals that provide for the required local administration of the MOA, FAD and Water Supply Permit mandated programs. It's clear to CWC that there is no recognition of the uniqueness of this relationship by those City employees that may or may not work at DEP.

CWC appreciates the opportunity to submit these comments and we remain available to answer any questions you may have.

Thank you

Very truly yours,

Jason Merwin

Executive Director

cc: CWC Board of Directors  
Roger Sokol, NYSDOH  
Kristine Wheeler, NYSDOH  
Tina Hunt, NYSDOH  
Patrick Palmer, NYSDOH  
Lisa Garcia, USEPA



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Ryan Naatz, Watershed Agricultural Council  
Richard Williams, Sr, East of Hudson Watershed Corporation

## CWC FAD COMMENTS

### **I. SPECIFIC COMMENTS ON DRAFT FAD LANGUAGE**

**PAGE 6:** The COVID-19 (COVID) pandemic began in New York State in March 2020 and has impacted the implementation of virtually all FAD programs. Some delays were outside of the City or its partner's control, such as government "stay at home" orders, while other delays related to the timely processing of contracting invoices. In order to protect field staff during the pandemic, the City reduced certain non-compliance watershed monitoring to minimize potential exposures. Contractors working on WAC and CWC projects experienced an increase in construction and material cost across all programs. Additionally, due to an increase in demand for contractors, there were fewer contractors putting in project bids. WAC staff, like many others, were unable to attend most in-person outreach and educational opportunities instead substituting virtual meetings and presentations. **Due to concerns regarding the City's timely payment of contract invoices during the pandemic, CWC closed the Septic Repair and Replacement Program to new applicants from August 2020 to April 2021.**

*CWC Comments: In 2020, CWC closed the MOA Septic Repair and Replacement for residential properties (the MOA Septic Program) due to actual failures by the City to deliver payment for the Stormwater Retrofit Program. CWC's concerns on the City providing timely payment were a direct result of the City failing to provide that payment per the Stormwater Retrofit contract. CWC allocates septic funds based upon an average cost per septic repair in the WOH Watershed. As a result of the City's failure to provide payment in another program, CWC was compelled to discontinue enrolling additional property owners experiencing failing septic systems until sufficient funds were on hand to allocate to those owners. Without assurances that funds would be available to fund every participating property owner, CWC would not be exercising proper fiduciary responsibility of the corporation. In January 2021 every other FAD stakeholder: Watershed Inspector General (WIG), Riverkeeper, Natural Resources Defense Council (NRDC), Catskill Center for Conservation and Development, Coalition of Watershed Towns, and Delaware County penned support for a change to CWC's contract to provide up-front funding to avoid future shutdowns. However, NYCDEP agreed to a contract change to immediately provide additional funds only after a proposed Consent Order detailing alleged Water Supply Permit violations was delivered to NYCDEP by NYSDEC many months later. The CWC MOA Septic Program could not accept new applicants with failing septic systems on a regular basis until February 2022, when CWC received payment from the City in the amount of \$7.5 million for the program. CWC recommends the underlined language above be added to more accurately reflect the foregoing.*

**PAGE 7:** In general, the panel found that the City’s WPP has been and will continue to be effective, though some components could benefit from rebalancing efforts to programs that offer a more direct contribution to water quality. Most prominently, the panel recommended that resources devoted to the Land Acquisition Program should be reduced and redirected toward the Watershed Agricultural Program, Stream Management Program, and Watershed Forestry Program. In addition, the panel recommended the LAP emphasis should be on the Flood Buyout and Streamside Acquisition Programs, targeting the most valuable lands for water quality protection. Additional recommendations from the panel included: **ensuring consistent funding for septic system repairs and replacements**; specific statistical and trend analyses for water quality, including phosphorus flux trends; integrating modeling for long-term decision support across programs; and performing a comprehensive social and economic analysis to understand the effects of the Watershed Protection Program on the watershed communities.

*CWC Comments: The panel recommended both increased and consistent funding. As stated in the NASEM Report, “The Septic System Program should be better funded to accelerate its implementation, eliminate the backlog of septic system repairs and replacements...” (Page 245). The emphasized language above should reflect not only consistency of funding, but also the recommendation of increased funding.*

**PAGE 13:** Watershed Rules and Regulations: In 2019, the City revised the WR&Rs to provide for greater consistency with the state’s regulatory program for stormwater and wastewater. Revisions were also incorporated in response to concerns raised by stakeholders in WOH communities, in particular related to noncomplying regulated activities, subsurface sewage treatment systems, holding tanks, Stormwater Pollution Prevention Plans (SWPPPs), and variances. **NYSDOH will update 10 NYCRR Part 128 to reflect the City’s amended regulations.**

*CWC Comments: It is surprising that NYSDOH has not yet formally promulgated the regulations pursuant to the State Administrative Procedure Act to incorporate the 2019 amendments to the New York City Watershed Rules and Regulations. As a result, it remains questionable whether the amendments are enforceable in the upstate watershed communities. This should be rectified as soon as possible and need not wait for approval of the revised FAD.*

**PAGE 13:** FAD Administration: The Revised 2017 FAD continues to require the City to report annually on the status of key partnership contracts and funding projections. **In addition, NYSDOH may request to meet with the City and program partners to discuss and foster resolution to any contract or funding issues that may be interfering with FAD program implementation. The Revised FAD continues the requirement for the City to co-locate staff with CWC in the Arkville building, including at least 40 NYCDEP staff assigned to that location by December 31, 2026.**

*CWC Comments: Despite numerous contracting concerns relayed to NYSDOH, CWC has never been requested to meet with NYSDOH regarding issues interfering with program*

*implementation. Additionally, NYCDEP had a FAD obligation to assign 26 staff to the new Arkville facility by 12/31/20 provided the building was able to be occupied. A Certification of Occupancy for the building was issued on March 4, 2020. To date there are still only 20 NYCDEP employees working in the Arkville building. Not only is this a FAD violation, but it has also resulted in negative financial impacts to CWC.*

*In 2020 when NYCDEP had 19 employees assigned to the facility, CWC challenged the Town of Middletown's removal of our previously approved real property tax exemption. Judge Richard Northrup, Delaware County Judge reinstated CWC's tax exemption for space leased to NYCDEP, but only to the extent that each NYCDEP employee stationed in Arkville consistently work directly with CWC staff. As a result, only 20% of the space leased to NYCDEP is tax exempt due to NYCDEP's decision to only assign one-fifth of its Arkville staff to CWC program activities. Judge Northrup noted:*

*[A]lthough the DEP employees who trim trees on City land, photograph DEP activities, inspect City-owned dams, or deal with DEP's internal operations may in a very general sense contribute to economic development and water quality within the Watershed, the nexus is attenuated, and their activities are for the City's purposes and not CWC's. Except for the four qualifying employees, DEP is not using the building for activities for which CWC would be expected to use it in furtherance of its purposes.*

*The court therefore finds that, except to the extent the space is used by the four qualifying employees described above, CWC is not entitled to an exemption for the space leased by DEP. The qualifying employees constitute 21% of the total number of filled DEP positions assigned to the Arkville property. For the period of time covered by this proceeding, CWC is thus entitled to an exemption for 21% of the space leased by DEP."*

*CWC vs. Town of Middletown, October 19, 2020 (Northrup, J)*

*Due to the lack of NYCDEP employees assigned to Arkville both in number and duties, NYCDEP co-location at Arkville is not having the meaningful impact called for in the 2017 FAD. CWC recommends that NYCDEP assigns additional staff to the Arkville building and that those staff members include individuals that assist all West of Hudson watershed partnership programs. These staff members can and should include auditors, an attorney employed by New York City Corporate Counsel, and more watershed program staff.*

**PAGE 13:** Other Stakeholder Issues: In its 2020 report, the NASEM WPP Expert Panel concluded that the City's source water protection program would benefit from analyses of the vitality of watershed communities. The panel acknowledged that many of City's substantial investments in watershed protection have resulted in benefits to the regional economy and **recommended further study of community well-being and the relative contributions of**

**City's various programs elements.** The goal is to optimize the mix of program activities to continue effective source water protection while enhancing the incremental benefits to community vitality. **The Revised 2017 FAD requires the City to undertake this study and submit a report in 2024.** It is anticipated that the results of this study will help inform decisions about future FAD program activities to be recommended for the 2027 FAD.

*CWC Comments: CWC recommends that another party, rather than NYCDEP, undertake the study and report recommended by the NASEM panel to ensure impartiality of the results. NYCDEP approached CWC to perform the study and report. With adequate City funding and an assurance of CWC independence to undertake the study, CWC is willing to undertake the administration of the study. CWC recommends the emphasized text above be revised to reflect the study be funded by the City but performed by another entity.*

#### **PAGE 14:**

**NYSDOH possesses authority under both State and federal law to enforce the Revised 2017 FAD and the City's Long-Term Watershed Protection Plan,** as revised in December 2021. Collectively, these documents, along with the City's WR&Rs and related requirements of the State Sanitary Code, see 10 NYCRR § 5-1.30, and federal regulations, see 40 CFR § 141.71(b), and 141.171, embody the "watershed control program" for filtration avoidance under State law and under the federal Safe Drinking Water Act, 42 USC § 300f et seq.

**NYSDOH may take enforcement action against the City to address any such violations** through the Commissioner's assessment of civil penalties of up to \$25,000 per day for each violation, see Public Health Law § 206(4) (d), and in a State or federal court action brought by the Attorney General on NYSDOH's behalf to compel the City to comply with the watershed control program or, in the alternative, to compel the City to filter its Catskill/Delaware water supply.

*CWC Comments: The available enforcement mechanisms identified above are simply not being exercised in instances where the City has clearly violated requirements of the FAD, including several detailed herein. The strongest enforcement action by NYSDOH observed by CWC are the comments provided by NYSDOH within required NYCDEP FAD reports. NYSDOH responses to missed FAD requirements by NYCDEP are often simply reminders to the City that they should be cognizant of their deadlines and responsibilities. Moreover, NYSDOH has been completely hands off when it comes to contracting issues that, as shown above, have significant detrimental effects to the administration of the FAD-mandated partnership programs. This "paper tiger" approach by NYSDOH is most clearly evidenced with CWC's recent septic program shutdowns.*

*In December, 2020 CWC notified NYSDOH of its inability to continue to accept new participants in the MOA Septic Program and provided a detailed breakdown of the Program funding shortfalls. The breakdown included both financial and logistical concerns regarding the City's administration of CWC contracts. CWC detailed it could*



*no longer assume that Septic Program funding would continue to be received uninterrupted. As a result, CWC could no longer accept applicants with failing septic systems into the program until sufficient funds were on hand to allocate to those applicants. From the initial date of the program shutdown until February, 2022, failing septic systems in the watershed went unreported and unaddressed. Discussions with NYCDEP and other Watershed Stakeholders continued throughout the Winter of 2020 and Spring of 2021, but failed to result in the shifting of funds to front end the program. CWC again appealed to FAD regulators for assistance. During a stakeholder meeting in January 2021 to discuss the NASEM report and despite written support submitted prior to said meeting from every FAD stakeholder supporting a change to CWC's contract to provide appropriate funding, NYSDOH's response and recommendation was that CWC submit comments once the draft revised FAD was released. NYSDOH took no action to resolve CWC's or the stakeholders concerns nor any enforcement action against the City.*

*Notwithstanding NYSDOH inaction, NYSDEC did take action and sent DEP a notice of violation dated September 16, 2021 under the Water Supply Permit for failure to adequately fund the Septic Program. NYSDEC's proposed consent order would have required NYCDEP to provide \$7.551 million to CWC to allow the Septic Program to reopen. As a direct result, NYCDEP provided that \$7.5 million to CWC in February, 2022. The Septic Program has been fully operational since February, 2022. If CWC simply provided comments under the draft FAD comment period as suggested by NYSDOH, the Septic Program would still be shut down today.*

*Similar instances are evidenced throughout NYSDOH's administration of the FAD, from NYCDEP's missed deadlines for enforceable contracts with other partners, to delays in funding, to failing to even address staffing shortfalls in their comments. The point of the matter is that such reluctance to enforce the terms of the FAD has real consequences for water supply protection and the economy of the Watershed communities. At minimum, CWC suggests that NYSDOH include a firmer commitment to enforcement in the Revised 2017 FAD. A statement that NYSDOH may take enforcement action has not proven successful.*

*Based in part upon NYSDOH's inaction to clear and detrimental FAD violations despite unanimous stakeholder support, CWC recommends that FAD administration and enforcement be split between FAD regulators in the future. NYSDEC as an agency regulates wastewater discharges, stormwater permitting, forestry practices, and stream disturbances under the State Environmental Conservation Law. CWC recommends that given this long standing expertise, NYSDEC should draft and enforce the City's FAD obligations for watershed protection programs and NYSDOH be responsible for enforcement of water quality standards. As described above CWC has informed and voiced concerns to NYSDOH, publicly and privately, about numerous contracting issues that do not comply with the FAD to no avail. CWC also recommends a violation scale or metric system incorporated into the FAD to allow for proper enforcement. CWC believes that if smaller enforcement actions were in place it may ultimately provide incentive for*

*the City to fully comply with all terms of the FAD. Included in the violation scale would be specific enforcement actions for each level and a public report detailing each violation.*

*As stated above, CWC does not believe NYSDOH has adequately addressed our concerns on a number of occasions. NYSDOH has made it clear they do not wish to get involved in contracting issues and disputes between CWC and the City. While this position is understandable to an extent, it should be something NYSDOH as the FAD Regulator should most definitely be involved in. Such a myopic stance undermines NYSDOH's obligations as the FAD Regulator. CWC believes that if NYSDOH does not want to get involved in disputes regarding the Watershed Protection Programs administered by CWC, then another agency should. CWC suggests that NYSDOH and NYSDEC be given joint regulatory and enforcement authority on the FAD. CWC does not dispute the appropriateness of NYSDOH's authority of the FAD for water quality purposes. However, CWC strongly believes a joint authority between NYSDEC and NYSDOH would assist in alleviating some of the contracting, funding and logistical concerns and disputes pertaining to our ability to efficiently and effectively manage our programs.*

## **PAGE 19**

<b>Report Description</b>	<b>Due Date</b>
Submit 2021 Long-Term Watershed Protection Plan	12/15/2021
	Completed
Submit 2026 Long-Term Watershed Protection Plan	12/15/2026
<b><u>Report on program implementation in the FAD Annual Report.</u></b>	Annually

*CWC Comments: CWC notes that NYCDEP provides numerous summaries in the Watershed Protection Plans detailing the work completed by CWC and other Upstate Partners. CWC spends much staff time and effort relaying information, details and statistics on our program accomplishments during the fall and winter months to NYCDEP so they can complete their annual reports and long term plans. CWC recommends that the report on program implementation in the FAD annual report be undertaken by the local partners for their respective sections. This would provide a more comprehensive and objective report than having the City solely reporting on the implementation of each program. CWC recommends that the above emphasized language be amended to provide that the local partners are to report on program implementation annually.*

## **II. CWC PROGRAM SPECIFIC**

## General

### Renewal contracts:

*CWC Comments: A number of CWC renewal contracts need to be executed and registered during the remaining term of the FAD. CWC was created by West of Hudson Watershed Towns as an independent organization tasked to administer a number of Watershed Protection and Partnership Programs. By any measurement, CWC has been profoundly successful and efficient in its management and administration of its programs.*

*However, the City has made it increasingly difficult to come to agreeable terms with new contracts. These difficulties have led to multiple program shutdowns since the issuance of the 2017 FAD. In addition to CWC's Septic Program being shut down, CWC was also forced to shut down the Stormwater Retrofit and MOA 145 Stormwater reimbursement programs during this term due to funding and contracting issues. CWC believes the Revised 2017 FAD can be critical tool to help ensure program shutdowns do not continue to occur. CWC requests the Revised 2017 FAD include not only the requirement for NYCDEP to provide funding, execution and registration of contracts for programs, but also to incorporate language that allows for either up-front payments, or at a minimum an annual payment structure to ensure funding is sufficient throughout the course of each year. The City's bureaucratic process is getting slower and less efficient. Overly burdensome contract reporting provisions and internal City policies and procedures that apply to grants issued by New York City to New York City-based organizations are being exported to Watershed partners. Many of these requirements are simply not applicable to the Watershed Programs. Many of CWC's invoice submittals to the City now number in 1,000s of pages. If NYSDOH and Watershed stakeholders truly want to ensure adequate programming as intended in the MOA, this funding mandate would assist in achieving that goal. NYSDOH should utilize these 2017 FAD revisions to reduce some the bureaucratic red tape involved with the City's contracting process and to ensure adequate timely funding of the Watershed Protection and Partnership Programs.*

### Contracting issues

*CWC Comments: CWC is not bidding on City jobs. CWC is not looking to earn profit for work through the City of New York. CWC was created specifically in the MOA to administer the Watershed Protection and Partnership Programs that benefit both the Upstate communities and the City. This was agreed upon by all signatories to the MOA. The issues of contracting with the City have been an ongoing topic of discussion among MOA and FAD stakeholders for a number of years at this point. Unfortunately, the process is getting worse rather than better. There is not one specific item that interferes with program administration but a number of City administrative items that cause delays, inefficiencies, confusion and tension among the Watershed communities and the City of New York. The City continues to request increased volumes of documentation, forms, registries and other items during its auditing, invoicing and procurement processes. These requests are often inconsistent and can change from day to day. Again, CWC is not*

*bidding on City work. CWC is not a vendor as typically understood by City contract and budget staff. Until the City recognizes the important roles that CWC and other partners play in the City's compliance with its FAD obligations, either through voluntary recognition or through FAD mandates, the process will not improve. No longer can internal policies and practices within the City trump FAD mandates. These City policies continue to be enacted despite FAD mandates and there has been little repercussions or pushback outside of CWC. CWC requests an acknowledgement within the FAD that the terms and obligations set forth within the FAD supersede City policies. Internal problems caused by City policies are not acceptable as a rationale for delays or interference in the administration of the Watershed Protection and Partnership Programs.*

## Funding Delays and Shortages

### Omnibus Contract

*CWC program contracts are specific to each program. Funds cannot be shared or transferred with limited exception. When there are delays or funding shortages, CWC is faced with the dilemma to slow down programs, shut down programs or potentially borrow funds from our Economic Development Fund, the Catskill Fund for the Future. The ability to borrow from the CFF is only allowed in certain contracts which removes that option completely in some cases. One option to alleviate funding gaps, delays in contracts, and other administrative issues with the City is the ability to enter into an "Omnibus" type contract. This contract would be all encompassing of CWC's numerous programs with a specific amount of capital and expense funds on hand and available for use. Accounting practices utilized by CWC and continually approved by the City would track and allow for full reimbursement to this contract when funds are made available in the specific program contract. This contract would be relatively easy to create and could reference all existing and renewal contracts for the various FAD mandated programs. CWC recommends that the draft FAD include the registration and funding of an omnibus contract with sufficient funding on hand to ensure that if and when any CWC program faces a funding delay or shortfall, the omnibus contract can be utilized to cover program needs. CWC recommends a minimum of \$5 million in Capital funds and \$3 million in Expense funds be provided in a lump sum payment to cover future program shortfalls.*

### Separate Dedicated account

*CWC Comments: The problems that Watershed partners face with the City's contracting and auditing process and their struggles in encumbering funds greatly impedes program implementation. The issues that the City creates detrimentally impact partners, leading to gaps in funding and program shutdowns; these inevitably have a negative impact on water quality and cooperation between partners. These are not new issues and they are common. In order to combat these delays, CWC suggests that the City establish dedicated accounts for all of the FAD-required programs. The creation of dedicated*

*accounts would streamline program implementation and the distribution of funds that are required to maintain water quality and economic vitality. This dedicated account could be modeled by what is currently utilized for land acquisition and the precedent can be mirrored for the protection programs with minimal complications. Neither CWC nor the Upstate partners should be asked or expected to front or cover funding for one of the largest and wealthiest Cities in the United States and the world.*

#### Septic Funding Eligibility

*CWC Comments: Over recent years a number of wastewater lateral connections to municipal owned wastewater treatment plants have been identified as broken, damaged, and/or failing. During evaluation of repairs numerous connections have been classified as “undocumented hookups” due to lack of documentation and uncertainty as to date of install. These classifications prevent property owners from performing timely repairs and contributes to negative water quality impacts. The process for these existing properties is to apply for the ability to connect and ensure that these connections meet current standards. This takes time and funding that some property owners do not have. Delays will only exacerbate water quality impacts. CWC proposes that properties that are within defined municipal sewer districts that have clearly been utilizing municipal wastewater plants for a long period of time be eligible to apply for CWC septic funding to complete compliant repairs when they are told they are not a documented user within the district. This new eligibility criteria can be negotiated with the City through a contract amendment and CWC program rules.*

**PAGE 21:** The Septic System Maintenance Program is a voluntary program open to eligible participants who constructed new septic systems after 1997 or participated in one of the septic repair programs, and is intended to reduce the occurrence of septic system failures through regular pump-outs and maintenance. Through CWC, participants are reimbursed 50% of eligible costs for pump-outs and maintenance. As part of the program, CWC also develops and disseminates septic system maintenance educational materials. The goal is to continue to fund 50% of the cost for septic pump-outs to qualified properties to enhance the functioning, and reduce the incidence of failures, of septic systems throughout the WOH Watershed.

*CWC Comments: Eligible participants under the CWC Septic Maintenance Program include a far larger breadth of existing septic systems in the WOH watershed than only those constructed after 1997 or those that have participated in one of the CWC septic repair and replacement programs. CWC requests that the emphasized language above be changed to accurately reflect eligible participants to include non-compliant regulated activity septic systems and those that were built prior to 1997.*

*In addition, the stated FAD goal should not be the “continue[d] funding of 50% reimbursement of eligible costs for pump-outs and maintenance.” CWC reimburses at a cost share consistent with CWC’s Program Rules. The Agreement between CWC and NYCDEP does not limit the cost share to 50%, leaving this determination to the*

*reasonable discretion of the CWC Board. CWC believes a more appropriate stated goal of the Septic System Maintenance Program should be “to provide reimbursement to homeowners at a rate that incentivizes septic system maintenance and upkeep to enhance the functioning, and reduce the incidence of failures, of septic systems throughout the WOH Watershed”. CWC also requests the above emphasized language be changed to reflect that funding for the Septic Maintenance Program be sufficient to cover all eligible septic systems in the WOH Watershed (over 23,000 septic systems).*

*CWC and NYCDEP have started discussions regarding a potential program and funding for improved management and disposal of septage wastes within the WOH Watershed. Preliminary discussions have proposed CWC transfer funds from the Catskill Fund for the Future, to cover the costs of a program to evaluate septage accepting capabilities at existing municipally owned wastewater plants. The study would allow for an evaluation of costs and priority areas for additional septage accepting capabilities throughout the Watershed to ensure that continued repair and maintenance of septic systems is achieved without incident. CWC anticipates our renewal Septic Maintenance Contract with the City will be the tool utilized to reimburse the CWC CFF upon registration. CWC requests the FAD include language obligating the City to refund any and all costs incurred by CWC for a septage study program. CWC believes the results of such studies should be used as the basis for the City to provide funds for capital improvements to existing Watershed facilities as a way to share the burden of accepting and treating septage from throughout the Watershed to further protect the City water supply.*

*CWC also requests the addition of language mandating the City to accept 71,000 gallons of septage per week at the City-owned Wastewater Treatment Facilities as agreed in the 2018 Side Agreement. The acceptance of waste is a mutually beneficial act that fits the goal of both protecting the water supply and enhancing economic vitality of the watershed communities. The FAD should reflect the total volume of 71,000 per week and the specific weekly volumes at each of the City plants that accept septage:*

*Grand Gorge: 22,500 gallons per week  
Pine Hill: 12,500 gallons per week  
Margaretville: 22,500 gallons per week  
Tannersville: 13,500 gallons per week*

**PAGE 23:**

Contract with CWC to provide funding, if necessary, to allow maintenance each year <b><u>of 20% of the total number of septic systems eligible under the Septic Maintenance Program Rules.</u></b>	Ongoing
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*CWC Comments: There are over 23,000 septic systems in the WOH Watershed. For the City to provide funding for a pump-out every 5 years, CWC’s Septic Maintenance*

*Contract with the City would require \$1.38 million per year to service 4,600 septic pump-outs at \$300 per pump-out. This does not include any funding for additional eligible repairs to certain components of individual septic systems. However, NYSDOH's standard per Appendix 75A is to pump out septic systems every 3 years. CWC requests that the referenced 20% above should be amended to reflect the Appendix 75A standard and thus provide for maintenance funding of 33% of the total number of septic systems in the WOH Watershed.*

#### Shokan

**PAGE 25:** The potential need for a community wastewater management system for the Hamlet of Shokan was identified subsequent to the MOA. The Revised 2007 FAD required the City to complete a study to determine that potential need. Under the 2017 FAD, NYSDOH, in consultation with NYSDEC, directed the City to fund an engineering study to determine the appropriate community wastewater management system to serve the hamlet of Shokan in the Town of Olive, as well as to fund the design and construction of that system. The Shokan project scope has since been expanded beyond the Hamlet of Shokan to also include the Boiceville wastewater service area. **The City issued the block grant for the Shokan project in August 2020.**

*CWC Comments: CWC, as administrator for the Shokan project, recommended a block grant for the Shokan project, which NYCDEP has approved. However, NYCDEP has not yet issued the entirety of the block grant for the Shokan project. As a result, the underlined language above is inaccurate and should be amended to reflect the current status of City funding.*

#### **PAGE 26:**

Activity	Due Date
Complete preliminary study for Halcottsville and New Kingston	Completed
<b><u>Approve block grant for Halcottsville</u></b>	Completed
<b><u>Approve block grant for New Kingston</u></b>	Six months from date of completed Study Phase (estimated 3/31/2018)  Completed

*CWC Comments: Through CWC's Catskill Fund for the Future (CFF), CWC has awarded a \$5 million loan to the Community Wastewater Management Program due to the bids for the Halcottsville and New Kingston projects coming in roughly 50% over budget. NYCDEP has agreed to a contract amendment and is working through the*

*process of appropriating the additional funds to cover project costs and reimburse the loan. CWC believes it should be an obligation under the FAD to refund the CFF for any funds utilized for the Halcottsville and New Kingston projects, and requests this obligation include a deadline for CWC to receive a refund.*

**PAGE 27:**

Activity	Due Date
<u>Community Wastewater System for the Hamlet of Shokan</u>	
• Work with CWC to provide funding for the engineering study for a community wastewater system for the Hamlet of Shokan.	Completed
• Contract with CWC to provide funding to implement the Shokan project.	12/31/2018 Completed
• Complete preliminary study for Shokan, which includes the proposed service area to be approved by NYSDOH, USEPA and NYSDEC.	3/31/2019 Completed
• Approve block grant for Shokan project.	Six months from date of completed Study Phase (estimated 9/30/2019) Completed
<u>• Transmit to CWC the remaining block grant funding for Shokan project.</u>	<u>7/31/2022</u>
• Complete design for Shokan.	One year from date of town approval to enter Design Phase (estimated 12/31/2020; revised 12/31/2024)

*CWC Comments: CWC has concerns regarding NYCDEP's ability to provide the remaining block grant by July 31, 2022. As previously stated, there is likely to be no enforcement and no consequence to NYCDEP if payment is not issued by the FAD deadline.*

*CWC notes the likelihood of increased costs for construction of the Shokan project, as evidenced by the construction bids for the Halcottsville and New Kingston Community*



*Wastewater Projects referenced above. It is difficult to say when prices will begin to stabilize. As sizeable a hurdle it was to ensure the additional \$5 million in combined overruns for the Halcottsville and New Kingston projects, it would be significantly more strenuous to secure a potential 50% in cost overruns on the Shokan project. Current estimates for construction of the project are roughly \$40 million. It would be prudent to have the City begin the process of setting aside funds for the anticipated cost increases. CWC suggests this begin immediately and the City have the funds available to award at the time of bid rather than pausing the process in order for the City to secure the funds later. Given this likelihood, CWC requests that the FAD require NYCDEP to provide a timeline for providing additional funding, in full, if bids for construction exceed the block grant.*

**PAGE 29: 3.4 Wastewater Treatment Plant Upgrade Program**

As of the Revised 2007 FAD, this program was concluded. The City's commitment to pay for Capital Replacement of Watershed Equipment and Methods at eligible WWTPs can be found in Section 6.1 of this FAD.

*CWC Comments: CWC suggests the continuation of the Wastewater Treatment Plant Upgrade Program to pursue studies regarding retrofitting existing wastewater treatment plants for septage acceptance. Given NYCDEPS recent attempt to ignore their obligation to accept septage at their Wastewater Treatment Facilities, CWC believes that the continuation of the Wastewater Treatment Plant Upgrade Program could be used to more thoughtfully address purported environmental concerns relating to the City's acceptance of septage in the future. CWC and NYCDEP have started discussions about septage burden sharing throughout the Watershed. CWC has agreed in concept to front funds for municipalities to evaluate what would be required to retrofit existing non-City-owned plants to accept septage by truck. CWC believes the FAD should ensure CWC is reimbursed by the City for costs of the study. The FAD should also provide that the City provide the capital costs required to retrofit the municipal plants for septage acceptance as a way to ensure capacity levels in the Watershed are adequate for growing demand of septic repairs and maintenance pump outs. This again provides the dual benefits of water quality protection and economic viability of the Watershed communities.*

**PAGE 31: Continue to contract with CWC to provide the funding needed to allow the Stormwater Retrofit Program to construct nine (9) stormwater retrofit projects per year, consistent with the Stormwater Retrofit Program Rules. Selection and implementation of eligible projects will be based on potential to benefit water quality protection.** These projects are in addition to those installed in coordination with CWMP projects.

*CWC Comments: CWC has concerns with NYCDEP's reluctance to identify or approve potential projects for design grants without partial design completed as part of the*

*application. As a result, approval of retrofit projects falls far below 9 per year. In addition to NYCDEP demands for specific design information at the time of application, NYCDEP also regularly describes projects as a “conveyance issue” rather than a “water quality issue” as a way to decline funding for potential projects early in the process. Conveyance of clean water away from pollutant sources or the conveyance of polluted water away from clean sources are both forms of water quality protection and stormwater control. The Stormwater Retrofit Program is one of two CWC managed programs that NYCDEP must also approve every project (a veto). The program is barely above a dormant program and lacks participation due to the difficulty of getting NYCDEP approval past an application submission. CWC suggests that the FAD be revised to include that the City must report on each potential stormwater retrofit project considered for possible inclusion and if applicable, justification of why the project was not deemed approvable. This review of projects should be published annually as part of the NYCDEP FAD reports. CWC will be working to improve efficiencies in the approval process and implementation of the program in our upcoming renewal contract. If no changes are made to how this important MOA Program is funded and evaluated by the City, there is no point to continue program administration at CWC.*

**PAGE 56:**

- With NYSDOH, USEPA, and NYSDEC, assess use of \$10.1 million committed to the SMP **and \$17 million committed to the CWC for LFHMPs in accordance with the Revised 2007 FAD, and \$15 million committed in 2017 FAD for support of LFA-generated projects, and determine if remaining funding is adequate to meet program needs.**
- Commit additional LFHMP funding, as needed, to meet program needs.
- **Coordinate the LFHMP funding with State and federal flood hazard mitigation agencies to maximize funding to WOH watershed communities and support the preparation of matching grant applications to State and federal programs for implementation of LFA-recommended projects.**
- Continue to provide technical support, education, and training to Watershed communities to support their use of Flood Insurance Rate Maps (FIRMs) and their participation in a variety of floodplain management, flood hazard mitigation, and flood preparedness programs.

*CWC Comments: The successor contract for the Local Flood Hazard Mitigation Program may face a funding gap due to delays from NYCDEP to complete the successor funding agreement in a timely manner. This concern has been expressed by CWC to NYCDEP and FAD regulators over many months throughout 2021 and 2022. If and when there is a gap in funding, CWC does not anticipate enforcement action by NYSDOH despite knowledge of our repeated concerns.*

*As part of the year long negotiations taking place on the \$15 million renewal contract, NYCDEP is firmly committed to ensuring the funding is spread throughout the proposed*

*5 year term of the contract and have stated their inability to provide large annual payments or to reserve funding balances for larger or unforeseen project applications. CWC has advocated to have the ability to utilize the funds as they are applied for to ensure that previously evaluated LFA projects are able to be implemented quickly and efficiently. The goal of the program is to reduce impacts of flooding that negatively impact both water quality and community vitality. CWC believes these goals should be met with the flexibility and urgency to implement projects as timely as possible to prevent any unneeded consequences that could occur with the next big storm or flood event. CWC has articulated our understanding that when the funds are expended, there may be no additional funding. That decision should be left to CWC and the communities as to how and at what speed those funds are expended, not the City's desire to throttle down the program funding to ensure the contract lasts five years to live out the term of the FAD. CWC suggests the FAD be revised to insist that the \$15 million commitment of funds be made available in at least annual payments based on annual anticipated budget submissions with the ability to invoice for additional funds when needed. It is counterproductive to the program not to implement projects as they are available and ready to be completed.*

*CWC also requests that in addition to efforts by local partners, the FAD requirement for coordination efforts on funding for flood hazard mitigation projects with State and federal agencies be taken on by the City and NYCDEP, not the local partners alone. NYCDEP's efforts of such coordination should be published annually. CWC requests that this change is reflected in the emphasized language above.*

**PAGE 86:** The goals for Watershed Rules and Regulations and Other Enforcement/Project Review under the Revised 2017 FAD are to:

- **Facilitate optional pre-application meeting requests, receive applications for approval of regulated activities, perform a review of SEQR notices and new projects in accordance with the WR&Rs, and monitor construction activity.**

*CWC Comments: NYCDEP has had a record of failing to notify CWC of pre-application meetings in the WOH Watershed for potential projects requiring stormwater pollution prevention plans, despite CWC's numerous requests to be included in such meetings and even including notifications as a requirement under the MOA 145 Program funding agreement. While there have been improvements as of late, NYCDEP has now been recently questioning methods and reimbursement funding levels following the completion of projects. CWC has voiced concern over not being invited to these meetings, DEP approving designs and construction activities for SWPPP's and then later questioning whether those activities were the most cost effective when applicants apply to CWC. CWC and NYCDEP have had multiple meetings to discuss the importance of CWC being invited to both pre-application and preconstruction meetings to ensure all parties are on the same page. CWC suggests stronger requirements for NYCDEP to coordinate and*

*invite CWC to all pre-application and preconstruction meetings for Stormwater projects. CWC also suggests a publication or digital calendar be made available to ensure CWC is alerted of upcoming and ongoing meetings and activities in this program.*

**PAGE 96:** In order to successfully implement a comprehensive Watershed protection program, dedicated professionals in a variety of fields are needed. **The FAD requires the City to maintain the level of staffing, funding, and expertise necessary to support all elements of the New York City Department of Environmental Protection Long-Term Watershed Protection Plan** (December 2021). Annual reporting of staffing, disbursements, and out-year appropriations is important for determining if the City’s committed resource levels are sufficient.

*CWC Comments: The emphasized language above requires that NYCDEP maintain an adequate level of staffing at all of the City owned Wastewater Treatment Facilities in the WOH Watershed. In a letter dated February 7, 2022 from NYCDEP to CWC regarding a reduction of septage acceptance, NYCDEP pointed to minimized staffing as a result of a COVID-19 hiring freeze, retirements, and resignations. This reduction was despite NYCDEP’s obligation to accept WOH Septage in the 2018 Third Side Agreement. Although the issue regarding septage acceptance has since been resolved, NYCDEP’s admission of its failure to maintain adequate staffing at its wastewater treatment plants and operations division should be closely reviewed by FAD regulators. City policies cannot continue to take precedence over FAD mandates. There has been no enforcement on NYCDEP’s acknowledgement of staffing shortages.*

**PAGE 96:** At part of its 2020 report, the expert panel convened by NASEM concluded that the City’s source water protection program would benefit from analyses of the vitality of watershed communities. **The panel acknowledged that many of City’s substantial investments in watershed protection have resulted in benefits to the regional economy.** The panel recommended further study of community well-being and the relative contributions of City’s various programs elements, with the goal of optimizing the mix of program activities to continue effective source water protection while enhancing the incremental benefits to community vitality. **The City will undertake this study and submit a report by December 31, 2024.** It is anticipated that the results of this study will help inform decisions about future FAD program activities to be recommended for the 2027 FAD.

*CWC Comments: CWC has previously offered to undertake the aforementioned study, with City funding. CWC requests that, regardless of who conducts the study, the scope and methodology are provided to all Watershed stakeholders for their review and comments prior to a Request for Proposals being released.*

**PAGE 97:**

Activity	Due Date
Co-location of NYCDEP staff with CWC in new office in Arkville, NY:	

<ul style="list-style-type: none"> <li>• Sign a binding commitment to lease office space in Arkville, NY for relocation of NYCDEP program staff</li> </ul>	1/29/2020 Completed
<ul style="list-style-type: none"> <li>• <b><u>Assign at least 26 NYCDEP staff to new offices in Arkville, NY.</u></b></li> </ul>	<b><u>12/31/2020</u></b> <b><u>Completed</u></b>
<ul style="list-style-type: none"> <li>• Assign additional staff, as necessary, to ensure that <b><u>a total of at least 40 NYCDEP staff</u></b> are assigned to new offices in Arkville, NY.</li> </ul>	12/31/2026

*CWC Comments: The highlighted activity is inaccurate. CWC would like to note again that NYCDEP has not relocated 26 staff members to the Arkville office space. As previously mentioned, as of January 2022, only 20 NYCDEP staff were located at the Arkville facility and only 5 of those staff have any working relationship with CWC. These employee assignments do not fit with the intentions of the facility as previously agreed upon. CWC requests that NYCDEP immediately increase their staffing numbers to 26 staff at the Arkville facility to improve efficiencies and coordination of our partnership as what was previously planned.*

*Additionally, the FAD should mandate meaningful NYCDEP and City staff positions be located within the Arkville facility to ensure the stated goals of efficiency and coordination take place. CWC requests that the FAD provide that NYCDEP staff assigned to the Arkville facility fulfill the purpose of facilitating cooperation and partnership with WOH partners to contribute to economic development and water quality (per Judge Northrup's decision as noted above), not just staff to fill a quota. CWC believes that NYCDEP should relocate or hire certain staff from their OEA division, insurance division, legal division and an attorney employee of NYC Corp Counsel who works on NYCDEP watershed matters. City employees located in Arkville and dedicated to Watershed programs would greatly increase efficiency issues that continue to be discussed year in and year out with FAD stakeholders. It would provide a great first step to ensuring the programs are funded, administered and reviewed efficiently and effectively. Contracting concerns have plagued the administration of programs for years. This is an easy mandate to incorporate into the FAD.*